

## **NetCompetition's Comments on the FCC "AllVid" Set Top Box NPRM MB Docket No. 16-42/CS Docket No. 97-80**

Note: Comments are from Scott Cleland, Chairman of NetCompetition

- NETCompetition.org is a pro-competition e-forum representing broadband interests. See [www.netcompetition.org](http://www.netcompetition.org).

Think for a moment. Would anyone think it "pro-competitive" if a government agency mandated an "Unlock the Big Box Stores" ruling so that WalMart, Target, or Best Buy could no longer install effective doors, locks, security guards or anti-theft devices on their store perimeters to protect the value of their inventory, all so that Google, Amazon, or eBay could take it for free and then profit from selling it online?

The companies that comprise the ~\$200b pay TV industry are the video programming functional equivalent of Big Box stores, and the FCC's AllVid NPRM is the functional equivalent of a looters pardon.

Consider how the FCC's "Unlock the Box" looters' mantra is profoundly anticompetitive and destructive.

- First, the FCC has cherry-picked its facts to politically fictionalize a market with no choice when consumers enjoy exploding competitive choices for video navigation devices, and market competition and innovation are already rapidly obsolescing the cable set-top box with apps – without the FCC.
- Second, the FCC's proposal is not unlocking the box, but unlocking the copyright, privacy, and contractual protections necessary for this ~\$200b pay TV industry to create, protect and monetize the most valuable video content in the world.
- Third, the FCC's political proposal is apparently largely designed to benefit one exceptionally dominant and politically-well-connected company, Google."

That is why the FCC's AllVid NPRM is anticompetitive, anticompetitive, anticompetitive; the exact opposite of the FCC's pro-competitive claims.

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## Part 1

### **FCC's AllVid Proposal Is Really The Great Google Ad Grab**

Submitted by Scott Cleland on Fri, 2016-01-29 13:22

While the PR cover story of the FCC's AllVid proposal may be about more consumer choice and competition to reduce the cost of cable set-top boxes, don't be fooled.

In [announcing](#) it, the FCC Chairman admits there's already consumer choice aplenty: *"American consumers enjoy unprecedented choice in how they view entertainment, news and sports programming. You can pretty much watch what you want, where you want, when you want."*

And the AllVid proposal is not about saving consumers money.

If it were, the FCC would not be shunning the obvious, best and cheapest solution of replacing the need for a set-top box entirely, by modernly and naturally transitioning them to the sector norm of easily-downloadable, cheap/free apps.

No, the FCC is choosing the hardest, most-counterproductive, most-regulatory-dependent option imaginable.

The FCC is mandating a de facto industrial policy shell game, where the FCC effectively redistributes revenues and profits from FCC-regulated businesses, to unregulated businesses that do not have the same FCC duties to protect consumers' privacy/security, or to respect and protect hundreds of billions of dollars worth of copyrighted proprietary property from piracy.

Under the proposal, consumers will still pay for old-style set-top-boxes – but just pay someone else.

How do we know what the real story is here?

Fortunately, the media had little trouble understanding that this is a Google-driven FCC rule, because simultaneous with the FCC Chairman's announcement and his sharing of his formal AllVid proposal for the first time with his fellow commissioners, Google literally was inviting Hill staffers to their Google Capitol Hill headquarters for an exclusive AllVid demo of their new Google-Box solution.

This is what their Hill briefing invite said: *"Test Drive the Future: Demo the Competitive-Video Solution... Please join the Competitive Video Choice Coalition (CVCC) on Friday, January 29th, **at Google's office** (25 Massachusetts Ave, N.W., 9th Floor) at 10:45 am for a one-hour demonstration of a competitive set-top box solution. ...The competitive solution demo will address key policy questions..."* [Bold added]

How could Google enjoy confidential FCC deliberative-process information and timing, that not even all FCC commissioners enjoy, and be so well informed so far in advance to be able to devise an elaborate demo, and to organize a well-orchestrated Hill briefing at Google's Hill offices, if Google was not intimately involved and driving this regulatory process behind the scenes with special access, and apparently without the meaningful ex parte notices required?

Don't be fooled by this Googlesque PR story that this is about consumers, when Google users are not their customers, but the product they sell to Internet advertisers, and when the last big FCC rulemaking was [puppeteer-ed by Google](#) to successfully exempt, at the last minute, Google's and the edge's traffic from the FCC's Title II reclassification.

**The real story here is "The Great Google Ad Grab."**

The FCC is in the process of forcing the pay TV industry to reengineer their video distribution systems, business models, content contracts, security and privacy protections, for the primary commercial benefit of one company, the world's dominant search and Internet advertising provider – Google – which after [dominating](#) Internet search advertising, and then [dominating](#) mobile Internet advertising, needs to dominate a new and bigger market, TV advertising, in order to maintain its highly-unusual steady 20% revenue growth rate, and to remain on path

to go from being the second [most valuable company](#) in the world, to being the most valuable company in the world.

If you need further evidence to believe that this AllVid proposal was tailor made for Google's search prowess and **dominance**, consider how the FCC Chairman closed his [announcement](#) of this proposal in Re-code: *"Innovation will drive more options for user-friendly menus and **search functions** as well as expand access to programming created by independent and diverse voices. Just as **online searches** today lead consumers to a **breadth of information**, so, too, can improved **search functions** lead consumers to a variety of video content that is buried behind guides or available on video services you can't access with your set-top box today."* [Bold added]

What has Google said previously that can help inform this issue?

*"Ultimately our goal at Google is to have the strongest advertising network and all the world's information"* [explained](#) Google Chairman Eric Schmidt.

*"Anything that increases Internet use ultimately enriches Google... more eyeballs on the Web lead inexorably to more ad sales for Google"* [explained](#) Google's Chief Economist Hal Varian.

The real story here is Google wants to **add more ads** and TV advertising is their next most coveted market to dominate.

Currently Google generates ~\$[72b](#) in revenues annually of which 90% are from Internet advertising. Global TV advertising was \$[173b](#) in 2015, which is 28% of the \$[612b](#) in total global advertising market per Statista.

At its simplest, what the FCC AllVid proposal does is force the regulated pay TV industry to create a Google-most-friendly IP search interface/portal into their proprietary pay TV offerings.

That way Google would be enabled to index and then monetize their competitors' most valuable proprietary information for free, by adding Google Internet ads as an overlay to competitors' ad-supported content, and by skipping the ads of their competitors, to kneecap their competition's relatively much smaller advertising businesses, and to devalue their competitors' paid content assets made vulnerable by the FCC proposal.

What most people don't know, but should, is that **Google's YouTube has long maintained a closed proprietary interface that does not allow others to search**

**index YouTube, Google Books, or Google's other proprietary content** like Google is demanding to search index competitors' pay TV's proprietary content.

In sum, the FCC's AllVid proposal is blatant corporate welfare for predominantly one company, Alphabet-Google, which is worth a half a trillion dollars.

The FCC predominantly would be giving Google access to most of the benefits and business value of their pay TV/MVPD competitors for free, with none of their legal duties to protect user privacy and copyright owners' content, none of their media ownership and competition limits, none of their EEO responsibilities to be diverse in employees and programming, and none of their paid programming costs of doing business.

Don't be fooled. The FCC's AllVid proposal is not about consumer choice of set-top-boxes.

It's predominantly about "The Great Google Ad Grab."

## Part 2

### **Questioning Google's Extraordinary Influence over U.S. Government Decisions**

Submitted by Scott Cleland on Thu, 2016-02-11 15:56

Does the [impartial](#) administration of justice, the [integrity](#) of the U.S. Government, and the [oath](#) of all federal employees to support and defend the Constitution of the United States, require that private interests not be allowed to supplant the public interest?

Is it essential that federal Inspectors General, law enforcement, Congress, the Courts, and the press all hold U.S. Government departments, agencies and employees accountable to the U.S. Constitution, the law, their [oaths](#) and [ethics pledges](#)?

Does "the press" have a [right](#) under the U.S. Constitution, and an [ethical duty](#) to their readership, listeners and viewers, to "[seek truth and report it](#)," to hold Government, government employees and elected/appointed officials, publicly accountable to their [public ethical commitments](#), [oaths](#), and [duties](#)?

Is it legal, ethical or publicly defensible for one company, Google, to have several former employees or consultants [enthroned](#) in positions of influence that just

happen to cover most all the parts of the U.S. Government that matter most to Google commercially?

Did all of these former senior Google [employees](#), who apparently made most of their considerable wealth in Google stock, have to divest themselves of their Google stock, or put their portfolios in a blind trust as generally required under the government's [ethics rules](#), when they entered public service, given that there was no public mention of it when they were each appointed or announced?

### **NASA, USPTO, DOJ, FTC, FCC, and DOT/NHTSA**

Are the experiences of six prominent departments or agencies -- NASA, USPTO, DOJ, FTC, FCC, and DOT/NHTSA – enough data to establish an organized pattern of private influence?

**NASA:** Is it just coincidence that Google's billionaire executives are the only private citizens who enjoy the extraordinary personal, corporate, and private [benefit](#) of a having their personal/executive corporate jet fleet land, take-off, hanger, and refuel at a Federal Government facility, [Moffett Federal Airfield](#), that just happens to be a few miles from Google's Mountain View headquarters, under an extraordinarily favorable 60 year lease, with [government subsidized](#) jet fuel?

Is it just coincidence that the Defense Department [decided](#) to locate its first and only innovation pilot office at Moffett Field with Google? Is it another coincidence that Google enjoyed an [unfair](#) commercial time-to-market advantage over its competitors in testing its drone delivery fleet, "Project Wing," by [piggybacking](#) NASA's Government-only, FAA-waiver-testing-authority, that clearly prohibits waivers for commercial operations like Google's?

**U.S. Patent and Trademark Office (USPTO):** Is it just coincidence that after Google was publicly credited with helping the President's re-elect campaign [See: [Bloomberg](#), [Stuff.com.nz](#), [Bloomberg](#), [Built in Chicago](#), [Time Magazine](#)], and just 10 days after the 2012 Presidential election, the company which arguably faced the most patent liability and big lawsuits in the country, Google, just happened to get a [patent reformer](#) and its former Deputy General Counsel for Patents and Patent Strategy from 2003-2012, Michelle Lee, [appointed](#) to be Director of the USPTO's Silicon Valley Office, and then [quickly](#) thereafter to the Head of the USPTO, and it just happened that later most of the [biggest lawsuits](#) that Google [faced](#) happened to get [settled](#), and it just happened that the USPTO helped demonize many of those who brought lawsuits to defend their USPTO-approved patents as "trolls," and it just happened that Google got more fast-track patents [approved](#) than any other

company in the months after Lee was put in charge, and it just happened that the USPTO began unilaterally invalidating an extraordinary amount of existing already USPTO-approved patents, many of which involved Google's patent liabilities?

**DOJ:** Is it just coincidence that after Google was publicly credited with helping the President's re-elect campaign [See: [Bloomberg,Stuff.com.nz](#), [Bloomberg,Built in Chicago,Time Magazine](#)], and just two weeks after the Presidential election, the U.S. DOJ [appointed](#) former Google outside antitrust counsel from 2008-2011, Renata Hesse, to be Acting Chief of DOJ's Antitrust Division (leapfrogging the other four DOJ Antitrust Division Deputies with more seniority at the time).

Is it just a coincidence that less than 36 hours after Google's former antitrust counsel was put in charge of the DOJ Antitrust Division, Bloomberg [reported](#) that "*Google Inc. may skirt the most serious antitrust allegations under investigation*," when just a week earlier their sources familiar with the matter [indicated](#) that "*FTC Chairman Jon Leibowitz told Google to propose a resolution to a host of antitrust concerns in the coming days or face a lawsuit*" and when three weeks before the Presidential election, Bloomberg [reported](#) "*Federal Trade Commission investigators are circulating an internal draft memo that recommends suing Google for abusing its dominance of Internet search in violation of antitrust laws*"?

And is it just another coincidence that just several months after the FTC shut down the biggest law enforcement investigation into Google, the DOJ shut down the next largest law enforcement investigation into Google at its first possible opportunity, when it silently [let lapse](#) the DOJ's \$500m criminal Non-Prosecution Agreement (NPA) with Google, despite the [public evidence](#) that Google violated the NPA and its compliance requirements by breaking five additional laws during the NPA probation period?

**FTC:** Is it just coincidence that just after Google was publicly credited with helping the President's re-elect campaign [See: [Bloomberg,Stuff.com.nz](#), [Bloomberg,Built in Chicago,Time Magazine](#)], the FTC went from a substantial enforcer of [antitrustlaw](#), [deceptive practices law](#), and [privacy law](#) against Google, to largely exonerating Google of antitrust problems 68 days after the Presidential election in awkwardly [closing](#) its search-bias [investigation](#), to [not enforcing](#) the FTC-Google privacy consent decree despite many [public entreaties](#) from many complainants, and to the point of [aggressivelydefending Google](#) publicly at Google's [secret request](#)?

**FCC:** Is it just a coincidence that just a week before the FCC was on path to reclassify Google's edge traffic as subject to its Title II common carrier regulation in its Open Internet Order redo, Google [petitioned](#) the FCC that both the FCC and the *Verizon v.*



FCC Court were factually and legally wrong in including Google in the two-sided market of interconnection, and the FCC just happened to exempt Google et al exactly as Google requested, against the FCC's better legal judgment?

And is it just a coincidence that in the FCC's current AllVid set-top box proceeding, Google [petitioned](#) the FCC to propose a rulemaking that would allow Google YouTube access to all Pay TV providers programming so that Google could sell ads against their proprietary TV programming, but no Pay TV provider could sell ads against Google-YouTube's proprietary programming, and the FCC just happened to do exactly what Google requested, and Google alone just happened to have all the inside FCC information necessary to give a [technical demonstration](#) of its FCC set-top box solution for Hill staffers within 48 hours of news that a proceeding was going forward?

***Department of Transportation (DOT) & National Highway Transportation Safety Administration (NHTSA):*** Is it just a coincidence that after massive Google PR campaign promoting its unique vision of fleets of self-driving cars with no brakes or a steering wheels because human drivers are auto safety's enemy, in contrast to the auto industry's vision of safety-testing incremental advances in semi and fully autonomous vehicle driving options, DOT/NHTSA are now largely championing Google's unique self-driving car/ecosystem vision that has "*no need for a human driver*"?

And is it just a coincidence that DOT/NHTSA has de facto backed Google's "moon-shot" technological approach for self-driving vehicle fleets that just happens to favor Google's unique and dominant, cloud-based, map-dependent, machine-learning "artificial intelligence(AI) driver" approach via: a new sweeping [policy statement](#) which states: "*For policymakers at all levels, the governing principal should be that technologies with proven, data-supported benefits that would make roads safer should be encouraged,*" with a ten-year \$4b budget request to subsidize R&D, and with a new [NHTSA letter](#) to Google informing it that Google's AI will be considered the 'driver' by the U.S. Government?

## **Conclusion**

Are all these decisions at six different USG Departments and "independent agencies" just a random collection of coincidences, or is this more like the coordinated behavior one would find if there was a "Boss Google" political influence machine that ensured Google's private interests routinely supplanted the public interest?



Could the commercial value of this apparent U.S. Government policy and enforcement favoritism and reputational protection that Google has enjoyed since the 2012 Presidential election total many billions of dollars in ill-gotten revenue and/or market capitalization?

Simply, is Boss Google's government goodies graft?

What should foreign governments think of the impartiality/integrity of U.S. Government enforcement decisions, non-decisions, and policies that benefit Google?

Lastly, if the press, Inspectors General, law enforcement, and Congressional overseers do not investigate Google's apparent extraordinary private influence over the U.S. Government's decisions, what would that say about the fear Boss Google and its political influence machine stokes, and about whether Americans can expect the U.S. Government to impartially administer justice and operate with integrity regarding Google?

With all these questions, don't we need answers?

### Part 3

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### The FCC's Googleopoly Gatekeeper Navigation Device Set-up

Submitted by Scott Cleland on Wed, 2016-02-17 11:32

It's the FCC-forcing-proprietary-video-to-be-free-to-Google stupid!

That's a Jim Carville-esque paraphrase of the FCC's AllVid commercial navigation device [proposal](#) to focus the mind.

The FCC spins its AllVid proposal as pro-competition in isolation when in reality the evidence will prove it profoundly anticompetitive overall.

That's because the FCC's AllVid proposal has been primarily [orchestrated](#) behind-the-scenes by [Google](#) to primarily benefit Google, which commands the world's overwhelmingly dominant 'navigation device' for the entire Internet – its [dominant Google Search engine](#), and also commands the world's [dominant](#) mobile operating system/navigation device for the mobile Internet, **Android**, which already can turn any of the hundreds of millions of Android smartphones, tablets, or laptops into an Internet TV 'remote control' or de facto navigation device.

Given Google-YouTube, the world's [dominant](#) Internet video distribution [platform](#) with ~1.6 billion viewers in 70 countries and 75 languages covering 95% of the world's population, and given Google-Android is the world's [dominant](#) mobile operating system with [>80%](#) share, the only thing Google lacks in the Internet video business is a willingness to pay a market-negotiated rate for the licenses and rights to use and profit from the world's most valuable video content, and to be a responsible corporate steward to protect the premium content from the devaluation of piracy.

So this FCC AllVid proposal is not about “unlocking the box” for competition, it is really about unlocking the legitimate “box” protecting copyrighted content and market-negotiated licensing contracts, not with the offered and legitimate, owner's “key” of proprietary *apps*, but with the destructive and illegitimate, “crowbar” of FCC *force*, so that Google can take for free what others in the marketplace now pay a competitive premium for, and so Google can singularly dominate the global monetization of this premium content for pennies on the dollar.

Now you see why Google wants the FCC to “unlock the box” for them. This ‘box’ protects premium content producers and distributors from theft, piracy, and abuse of their property.

Ironically and sadly, this “box” may be needed most to protect from the predatory devaluation of Google's dominant piracy-tolerant: navigation device/search engine, advertising/monetization platform, and YouTube distribution platform.

So how can we be sure this is what Google and the FCC are doing?

Consider the evidence of Google's history of anticompetitively devaluing premium content.

First, don't miss this damning Google admission in the *Viacom v. YouTube* [Statement of Undisputed Facts # 161](#): *“On June 8, 2006, Google senior vice president Jonathan Rosenberg, Google Senior Vice President of Product Management, emailed Google CEO Eric Schmidt and Google co-founders Larry Page and Sergey Brin a Google Video presentation that stated the following: “Pressure premium content providers to change their model towards free[;] Adopt ‘or else’ stance re prosecution of copyright infringement elsewhere[;] Set up ‘play first, deal later’ around ‘hot content.’” The presentation also stated that “[w]e may be able to coax or force access to viral premium content,” noting that Google Video could “Threaten a change in copyright policy” and “use threat to get deal sign-up.””*

Even in 2006, before Google bought YouTube, and when they only had ~44% of search share per ComScore, that email shows Google's leadership was keenly aware of the market power its search engine enjoyed as the leading 'navigation device' for all free Internet content at that time.

Google's leadership bought YouTube in 2006 knowing that video searches comprised roughly a quarter of all Internet searches and knowing that YouTube was the overwhelming Internet video market leader, precisely because its willful blindness to copyright infringement enabled fast piracy-driven search growth.

Tellingly, the *Viacom v. YouTube* [Statement of Undisputed Facts # 162](#) shows us that Google co-founder Sergey Brin disagreed with co-founder Larry Page and Chairman Eric Schmidt in buying YouTube because it effectively was forcing paid video to be free on Google; Mr. Brin said in an email: *"...is changing policy [to] increase traffic beforehand that we'll profit from illegal downloads how we want to conduct business? Is this Googley?"*

In the first four years of Google owning YouTube, Google's share of search [tipped to dominance](#) in increasing ~50% from 43.7% to 65.1% per Comscore, in large part because YouTube's piracy-fueled business model drove strong video search and search advertising growth.

Note that after Google purchased YouTube, Google sought to continue to leverage YouTube's blind-eye to piracy to force pay TV content producers into Google-favorable revenue deals with Google.

[Statement of Undisputed Facts # 216](#) tells us that Google Manager David Eun said on 2-15-07 that: *"Audio fingerprinting system whereby the content partner can send 'reference' fingerprints' to Audible Magic's database "are now live as well and are only offered to partners who enter into a revenue deal with us."* [Underline added for emphasis] (Translation: Google would only protect a video content owners' content from piracy, if they allowed Google to monetize and revenue share at an advertising price dramatically less than other advertisers paid for the same thing.)

How do we know that Google long understood the market power its world's dominant search engine/navigation device commanded? Santiago de la Mora, Google Executive, said 8-23-09 [in the NYT](#) that: *"Search is critical. If you are not found, the rest cannot follow."* In 2010, Google's search ranking head, Amit Singhal, tacitly admitted Google is *"the biggest kingmaker on this Earth"* [per the Telegraph](#).

In 2012, Google [led](#), [orchestrated](#), [politically-framed](#) and [set the political tone](#) for much of the Web's opposition to the SOPA/PIPA anti-piracy legislation, because it threatened Google's anti-property-rights [mission](#), [open philosophy](#), [business model](#), [innovation approach](#), [competitive strategy](#), and [culture](#).

From [2014](#) to [present](#), Google has sued in court that Section 230 in federal law completely immunizes Google from State law enforcement authority for violating state laws concerning consumer protection and property theft among other violations. 41 State AGs currently [oppose](#) Google's breathtaking claim of special legal immunity from all state law enforcement.

In sum, apparently Google's gambit here is to use its [political influence](#) to get the FCC to use its dwindling legal credibility to contort an outdated 1996 navigation device provision to forcibly open-source pay TV content and grant Google a political fair use claim to take the premium pay TV content for free and profit from it.

The combination of the FCC de facto open-sourcing pay TV content by fiat, with the anticompetitive reality of Google's dominant **search** engine navigation device, dominant **Android** remote control operating system, and dominant **YouTube** global Internet video distribution platform, and with Google's longstanding anticompetitive tolerance of piracy, would not be a pro-competitive dynamic as the FCC claims, but would be a profoundly anticompetitive and anti-proprietary content dynamic going forward.

Forewarned is forearmed.

Part 4

### FCC's Apparent Arbitrary AllVid Proposal

Submitted by Scott Cleland on Fri, 2016-03-18 14:59

*"Contradiction contradiction contradiction,"* rather than *"competition competition competition,"* would be a more accurate description of what the FCC's apparent arbitrary AllVid set-top-box [proposal](#) produces.

#### **Contradiction #1: FCC rules cable competitive in 2015, but not in 2016.**

In June 2015, the FCC [ruled](#) *"that cable operators are subject to... "Competing Provider Effective Competition"'* exempting cable from regulations, but in the spring of 2016, the FCC tentatively [concludes](#) that the ancillary cable set-top-box market is not competitive warranting maximal regulation.

In 1996, when Congress passed the Telecommunications Act, with a Sec. 629 provision requiring “*competitive availability of navigation devices*,” cable was an effective monopoly, so section 629 assumed a monopoly at first with competition forthcoming as a result of the pro-competition Telecom Act.

And assuming monopoly cable operators in 1996, it was more understandable for there to be a push for competitive availability of navigation devices for cable, given the lack of underlying competition for the underlying cable service at that time.

However, in the twenty years since 1996, cable’s [share](#) of the market has fallen from 98% in 1996 to about 53% today, with over a third of American households subscribing to a DBS service and over an eighth subscribing to a telco TV wireline service.

A drastic change in the underlying predicate of the Section 629 provision, from monopoly to the FCC’s 2015 ruling that cable services face effective competition throughout the U.S. via DBS, means there is also effective competition for set-top-boxes.

In other words, by extension logically the FCC already ruled last year that like cable services, their ancillary cable set-top boxes effectively, faced effective competition in the U.S.

**Contradiction #2: FCC claims 99% of users have no set-top-box choice when the obvious facts refute that foundational FCC fact predicate.**

The FCC initially [framed](#) the FCC’s AllVid proposal this way: “*Ninety-nine percent of pay-TV subscribers are chained to their set-top boxes because cable and satellite operators have locked up the market. Lack of competition has meant few choices and high prices for consumers...*”

However, the Free State Foundation’s great, fact-filled [info graphic](#) provides a reality check; we know over 200 million Americans watch their video content on smartphones and tablets, and even more do if one includes laptops and desktop computers.

And now that over half of all households with Internet access have online video connected to their TV in one way or another, Americans have a rapidly-growing, wide variety of choices of different devices that serve as “competitively available navigation devices:” Smart TVs, Roku 4, Roku Streaming Stick, Amazon Fire TV, Amazon Fire TV Stick, Google Chromecast, Google Nexus Player, PlayStation 4, Xbox One, Western Digital Media Player, Wii U, Netgear, NeoTV, Vizio, CoStar LT, Asus

Cube, Hisense Pulse, NeoTV Prime, TiVo Bolt, Nvidia Shield... thank you FSF for this helpful [listing](#) of over twenty “*competitively available navigation devices.*”

**Contradiction #3: The law has a sunset provision for competition, but the FCC assumes the market hasn’t changed much since 1996.**

What many don’t know is that this section 629 authority is not permanent, it has a strong sunset provision that says 629 regulations “*shall cease to apply when the Commission determines that:*” the market is fully competitive and it would be in the public interest.

To reach its desired outcome of more regulation and more regulatory authority here, this FCC looks at the navigation device world through a static 1996 lens, not the dynamic modern lens that the FCC has so often claimed so important to justify their justness and reasonableness in most all of their other major rulemakings.

If the FCC looked at this market fairly and factually and through a dynamic modern 2016 lens, they would see that this market is competitive, just like they found the cable market to be competitive last year.

In sum, rather than trying to “unlock the box” for more “competition competition competition,” the FCC would do better to “unlock the docs” so everyone can see the arbitrary “contradiction contradiction contradiction” between the FCC’s messaging and the reality of what the facts say in the FCC’s own documents and the law.

#UnlocktheDocs!

Part 5

**AllVid: FCC-Sponsored Piracy Would Extend Google’s Monopoly & Monopsony**

Submitted by Scott Cleland on Mon, 2016-03-28 17:10

- [Android](#)
- [Antitrust](#)
- [Congress](#)
- [Copyright](#)
- [Corporate Welfare](#)
- [DOJ](#)
- [EU](#)
- [FCC](#)
- [FTC](#)
- [Open Internet](#)
- [Piracy](#)

- [Google](#)
- [YouTube](#)

Google is the only major corporation publicly [pressuring](#) the FCC to [require](#) that all owners of proprietary video programming rights give away their valuable video property for free to Google and other companies online.

It is telling that to date no other major corporation has been willing to risk their brand publicly advocating for FCC-sponsored piracy to forcibly redistribute corporate wealth from Big Content to FCC-BFF-Google.

The evidence in this analysis will show that Google is the only entity in the world that has both the long-stated [mission](#), i.e. *“to organize the world’s information and make it universally accessible and useful,”* and the global monopoly power and corporate functional capabilities to fully commercially exploit this FCC-sponsored piracy proposal.

Only Google commands: *“monopolies over search and search advertising”* (per the 2012 FTC staff [report](#)); an [Android monopoly](#) over the licensed mobile operating system market for smartphone/tablet navigation devices; an Internet video distribution [monopoly](#) in YouTube; a [meta-data collection monopoly](#) that uniquely collects metadata and *personal* data (like viewer data) on [global Internet usage](#) of all types, functions, systems and devices; and [monopsony](#) (one buyer) power as the de facto, lone global “buyer/aggregator” of all the world’s content, products and services in its monopoly search index.

(While some other companies also may be able to profit a little initially from the proposed FCC-sponsored piracy, none of them will have a chance long-term competing with Google’s unprecedented breadth of monopoly and monopsony powers spotlighted just above and documented below.)

Guggenheim Partners analyst Paul Gallant recently spotlighted Google’s content aggregation monopsony power in brilliantly observing in *Washington Internet Daily* that: *“Set-top viewer data is the last tranche of data unavailable to Google.”*

Please take note that the FCC’s AllVid navigation device NPRM [proposes](#) *“to **require** multichannel video programming distributors (“MVPDs”) to [publicly] **offer three flows of information** ... (1) **service discovery** (information about what programming is available to the consumer, such as the channel listing and video-on-demand lineup, and what is on those channels), (2) **entitlements** (information about what a device is allowed to do with content, such as record it), and (3) **content delivery (the video programming itself...).**”* [Bold added for emphasis.]



This telling summary AllVid requirement exposes that the FCC's AllVid proposal has little to do with "set-top box competition" and everything to do with mandating that video programming companies' "offer" their proprietary video "*flows of information*" for free in an easily index-able and copy-able format.

The practical antitrust effect of this AllVid proposal would be highly anti-competitive overall. That's because it would artificially force the separate antitrust defined markets of offline and online advertising (as determined by the [DOJ](#) and [FTC](#)) to function going forward as one overall advertising market for video programming -- via an arbitrary and capricious government mandate. (See this [one-page chart](#) contrasting the offline and online advertising markets.)

### **The Case Why Only Google Can Fully Exploit the FCC's AllVid Proposal**

No one can compete with Google's global search and search advertising monopolies.

**Search:** Google Search serves >2 billion users globally who collectively conduct >[100 billion](#) searches a month. Since October 2015, >[50%](#) of Google searches are mobile. StatCounter's [latest](#) global search market share for Google is >[90%](#), ~30 times more market share than its next biggest search competitor, Microsoft's Bing. Google's search works in [123](#) languages, Microsoft's Bing in [40](#) languages. Google search offers a uniquely large and comprehensive information set via the world's largest search index size by far, >100 million [gigabytes](#) that's generated from crawling over 60 trillion unique [URLs](#).

Other than Microsoft, no other potential AllVid video beneficiary has a search engine or a search advertising business. And Microsoft Bing can't compete with Google on the mobile half of the global search business, because Microsoft effectively ceded its struggling mobile business to Google last year when it [shuttered](#) its Nokia business, [sold most](#) of its ad business to AOL, and [sold some](#) of its mapping business to Uber.

**Search Advertising:** Emarketer [estimates](#) Google has 72% share of U.S. search advertising, and notes that Microsoft is not even in the top eight mobile advertisers, which is telling given that half of all searches are mobile and over half of all Internet traffic is video. Google [serves](#) 4 million advertisers, 2 million more than any other digital advertiser. Over [2 million](#) websites are Google display ad partners and [1.2 million](#) websites depend on Google Maps. [~98%](#) of the top 15 million websites globally depend on Google Analytics for their advertising livelihood.

**Android:** No one can compete with Google's Android free OS monopoly. Given that Apple's iOS is not a competitor for [antitrust purposes](#), Gartner stats [per Statista](#) show

that Google commands **~97% market share** of 2015 global smartphone shipments. Android, with a unique [>1.5 billion](#) monthly active users, is the only viable *licensable* mobile operating system globally, uniquely licensed by a critical mass of 400 OEMs, >550 carriers, and ~4,000 distinct devices -- [per Google](#). In addition, Google commands the world's leading browser-based operating system, Chrome, with [>1 billion users](#) and 57% market share globally, which is 3.5 times the share of the next competitor, Microsoft Explorer, [per StatCounter](#). Google plans to consolidate Chrome with Android in 2016 [per the WSJ](#).

**Internet Video Distribution:** No one can compete with the scale, scope and reach of Google-YouTube's Internet video distribution monopoly either. YouTube now has roughly **two billion monthly users** around the world (given that it [announced](#) one billion monthly users in March 2013, [disclosed](#) that in just one of the three years since, it grew at a 40% annual viewership rate, so if we assume youTube grew viewers at only half that fast in the other two years, say 20%, the 1.0 billion x .1.4 x 1.2 x 1.2 = 2 billion YouTube users.)

Google has no peer in offering localized versions of YouTube in [85](#) countries in [76](#) different countries covering 95% of the world's population. There are ~1.1 billion videos on YouTube with ~7.8 trillion all time views, [per](#) Tubular Labs.

Per comScore's [February 2016](#) "U.S. Desktop Online Video Rankings," Google-YouTube was viewed by 77% of American online video viewers (182m of the total 234m) as compared to Facebook's 35% (81m), Yahoo's 25% (58m), and Comcast NBCUniversal 19% (44m).

The [most recent](#) comScore data comparing videos viewed and minutes per viewer are from March 2014, had Google outpacing Facebook, 2.4x and 3.7x respectively, AOL 8.4x & 5.9x, Yahoo 19x & 4.6x, and Amazon 67x & 11.7x.

**Monopsony Buyer/Aggregator of the World's Content:** Most people do not know that when they conduct a search they are not searching the actual Internet, they are searching the near exact copy of the Internet that resides on Google's computer, plus all of the proprietary content that Google has bought or taken from others without the permission or payment (that can be found nowhere else), plus all the [>190](#) Google products and services and the associated content, data and metadata that those Google products and services generate.

That's why then Google CEO Eric Schmidt [said](#) in 2002: "*We want to make sure the thing you're looking for is on Google 100 percent of the time.*" That's why Google Executive Evgeny Morozov [said in 2013](#) that "*Anything that you see in the real world*

*needs to be in our database.” That’s why then Google CEO Eric Schmidt [explained](#) in 2006: “Ultimately our goal at Google is to have the strongest advertising network and all the world’s information.” And that’s why Google Exec Santiago de la Mora [spotlighted](#) in 2009 the essential utility of search: “Search is critical. If you are not found, the rest cannot follow.” Finally that’s why Google Exec Hunter Walk [shared](#) Google’s vision for YouTube in 2012: “There is a real desire for YouTube to be a global classroom and a global town square, not just a global living room.”*

Google is unique in commanding control of access to the world’s only global comprehensive repository of digitized information, content, products, services, data and metadata. The U.S. DOJ in opposing the Google proposed Book Settlement as anticompetitive, [stated](#): *“The seller of an incomplete database... cannot compete effectively with the seller of a comprehensive product.”*

Competitively, this means that when the FCC makes the video information flows publicly available, other competitors won’t be able to compete with Google’s vastly more comprehensive index, product/service offerings, and digital data/meta-data trove.

## **Conclusion**

The FCC’s AllVid proposal is not pro-competitive. Overall it is profoundly anti-competitive and monopolistic, in that it will only extend, enhance and augment Google’s various monopolies and monopsonies.

It also would destroy the current vibrantly competitive and innovative video programming ecosystem with **Google’s anticompetitive, monovation dynamic**, where there can be only one way, one standard, one outcome, one winner.

Any monopsony buyer, wants to, and can, drive the cost of acquiring, accessing, or monetizing information/content/data towards zero.

It should be no surprise that this FCC rulemaking is being orchestrated and driven predominantly by Google, because it audaciously proposes what only Google would expect or demand, full unfettered, open access to the most valuable video programming library of proprietary content in the world, at zero cost to Google, and at the real cost of literally destroying the economic value this unique proprietary content and the economic incentives to produce valuable quality video programming in the United States in the future.

This FCC AllVid political gambit is on path to be Google’s single most naked, brazen and destructive abuse of its monopoly and political power -- yet.

## Part 6

### Top Takeaways from Google's Appeals Court Loss to MS State AG Jim Hood

Submitted by Scott Cleland on Mon, 2016-04-11 12:37

For the last year, Google was above state law in the U.S.; fortunately, it no longer is.

The U.S. Fifth Circuit Court of Appeals just ordered [dismissal](#) of the Machiavellian preliminary injunction Google won in Federal Court over a year ago that squashed a 2014 Mississippi State Attorney General subpoena and state law enforcement investigation of Google's alleged facilitation of *"dangerous and illegal activities through its online platforms."*

Forty State AGs backed MS AG Jim Hood in Court because the Federal injunction that Google won effectively neutered all State AGs from investigating or prosecuting Google for most any alleged Google violation of most any State consumer protection law.

Simply, the Appeals Court [ruled](#) that Google faced no *"irreparable injury"* in having to comply with the MS State AG's broad subpoena, and that *"[T]he normal course of state criminal prosecutions cannot be disrupted or blocked on the basis of charges which in the last analysis amount to nothing more than speculation about the future."*

In a nutshell, this court decision affects the Google big picture in three strategically important ways.

First, Google is again subject to state rule of law after a year of ill-gotten de facto immunity from state law enforcement investigation or prosecution.

Second, it exposes that Google has [a lot to hide](#) and cover up, because it is again subject to legal discovery, the law enforcement process which has [proved perilous](#) for Google in the past.

Third, this Google piracy-related case brings attention to a potential 'perfect storm' of Google-piracy vulnerabilities, in that it resurrects a fourth major potential Google-piracy vulnerability, on top of the May 2016 *Oracle v. Google* copyright-infringement [trial](#) deciding the amount Google owes Oracle in copyright-infringement damages; the April 2016 pending decision of whether the Supreme Court will hear the *Authors Guild v. Google* [petition](#) that Google Books is not fair use; and the 2016 FCC-Google

AllVid [proposal](#) that would force open-sourcing of all American video programming inviting mass piracy.

### **How does this strategic court decision affect the Google big picture?**

First, Google returns to effectively being subject to U.S. rule of law again in the U.S.

For the last year, Google's Machiavellian legal machinations amazingly gained Google de facto sweeping, practical immunity from U.S. State law enforcement investigation and prosecution.

Never before has one company finagled one decision that effectively corralled and neutered all U.S. state law enforcement from even investigating allegations of serious crimes like aiding and abetting illegal drug sales, human trafficking, credit card and ID document fraud, mass-copyright infringement, etc. and that potentially threatened the public safety of tens of millions of Americans daily.

The combination of Google's Machiavellian neutering of State law enforcement in Federal Court, coupled with Google's [apparent](#) Machiavellian [politicaldomestication](#) of the DOJ Antitrust Division and the FTC since the 2012 election, has sadly meant Google has been able to operate largely above the law in the U.S. for the last year.

Now with at least 41 State Attorneys General apparently interested in, and freed to, co-enforce the rule of law under the U.S. Constitution, the DOJ and the FTC again have some healthy inter-governmental accountability and public rivalry to subject Google to the rule of law like every other corporation is in America.

**Second, this Appeals Court decision is big reminder of how much Google has to hide, i.e. Google's established Federal [criminal record](#) and the evidence-rich-allegations of ongoing Google criminal behaviors.** (See some of the evidence [here](#), [here](#), [here](#), & [here](#).)

If Google did not have an abundance of incriminating evidence to hide, why would Google -- the company that famously expects that everyone else's information of most every imaginable type must be completely open to Google's search discovery, collection, analysis, and monetization -- fight in court to effectively deny state law enforcement in all fifty state jurisdictions from even doing the most basic functions of their sovereign duty, i.e. legal discovery -- investigating allegations of "*dangerous and unlawful activity*" that potentially endangers tens of millions of Americans every day.

Very simply, Google's de facto stance here is that the world must be totally open to Google's pervasively invasive [surveillance and discovery](#), but Google alone is entitled to be totally closed to any scrutiny, even legitimate state government subpoenas investigating evidence-rich allegations of Google aiding and abetting criminal behavior endangering the public.

**The obvious and epic incongruity and hypocrisy of this Google double-standard, combined with Google's characteristic neediness for obsequious media coverage, reeks of a Google guilty conscience here.**

**Innocent companies have no need to, nothing to gain from and everything to lose from, pursuing a Machiavellian legal strategy designed to publicly emasculate the overall state law enforcement process.**

Tellingly, Alphabet-Google Chairman Eric Schmidt famously implied that any Google users that expected their privacy to be protected by Google must be guilty of something, in [preaching](#) to CNBC's Maria Bartiromo: *"If you have something that you don't want anyone to know, maybe you shouldn't be doing it in the first place."*

At this point some readers are thinking that Google is innocent until proven guilty. Of course it is.

But of course as the Appeals Court just ruled, Google has no legal right to prevent sovereign state law enforcement from even investigating a criminal case against Google, because that would prevent law enforcement from any due process opportunity to prove in court that Google is guilty of crimes that harm public safety.

It is important to note here that Google has an established Federal [criminal record](#), in having [admitted](#) to knowingly profiting from violations of Federal drug laws for several years warranting a \$500m criminal forfeiture disgorgement penalty of Google's ill-gotten, illegal drug import profits.

Tellingly, MS AG Jim Hood seeks to investigate allegations and [evidence](#) that Google continues to violate criminal and civil laws in similar ways that Google criminally behaved in the past.

**Third, this court decision helps spotlight a potential upcoming Google-piracy liability 'Perfect Storm.'**

Few appreciate that Google faces a 'perfect storm' of piracy liability in 2016 from four different fronts, in four different forums, from four different groups of actual and potential Google piracy victims, alleging four different types of systematic piracy

by Google – MS AG Hood at the [State level](#), *Oracle v. Google* in [Federal Court](#), *Authors Guild v. Google* before the [Supreme Court](#), and the Future of TV Coalition versus Google in the [FCC AllVid proceeding](#).

Consider this.

What is the likelihood that a company (Google) is totally innocent of the multiple piracy or theft allegations against it, when four current different groups simultaneously are willing to take on the huge business risk and extraordinary legal cost/risk of challenging the world's most powerful company and the world's monopoly search and search advertising provider on which their businesses depend, for a period of years, when they have little to gain and a huge amount to lose, if they are either wrong on the law or are advancing inaccurate or frivolous allegations, and when these four current groups can point to roughly eighteen other groups who have charged Google with similar [systematic theft](#) of their intellectual property in the past, but either have already settled or could not afford to fight Google in court, e.g. [Yelp](#), [Viacom](#), [Apple](#), [Microsoft](#), [business directories](#), [wire services](#), [newspapers](#), [broadcasters](#), [movie studios](#), [publishers](#), [visual artists](#), [software providers](#), [photographers](#), [artists](#), [graphic designers](#), [illustrators](#), and [filmmakers](#).

## Conclusion

This strategically important court decision begs a big picture view of Google and its many piracies and apparently rapidly growing piracy liabilities.

Please consider this one last question.

With all this smoke, with all these fire alarms, with all these firefighters, fire trucks, and fire hydrants engaged in firefighting activities all over the place, with all the people willing protect their property from the fire and expose the burns they have suffered to the public, are we to believe no fire exists?

Part 7

## AllVid Deja-Vu: Google-YouTube's Forcing Video to be Open to Piracy Again

Submitted by Scott Cleland on Wed, 2016-04-13 10:05

The FCC's AllVid proposal is déjà vu. We have seen Google-YouTube's piracy-as-negotiating-leverage MO in action before.



Google's [puppeteering](#) of [FCC-sponsored piracy](#) in the FCC AllVid set-top box [proposal](#) is not the first time Google has [anticompetitively](#) used piracy promotion to gain an anticompetitive market advantage for YouTube's [monopsony](#) power -- i.e. its market power from being the only repository in the world where one can access a copy of most every video created whether it is legal or pirated, and where Google often promotes pirated videos near the top of its search results.

**Don't take my word for it, listen to Google executives' own words in Google's internal Gmails** captured for posterity in [The Statement of Undisputed Facts](#) filed in the 2007 [Viacom v. Google-YouTube](#) copyright trial that settled in 2007.

These [undisputed facts/Gmails](#) spotlighted and organized below are damning for three reasons.

First, they prove that for ten years, Google has been trying to *"pressure premium content providers to change their model towards free,"* which strongly suggests Google is using its [extraordinary political influence](#) over the Federal Government and the FCC to anticompetitively extort value from companies that Google-YouTube could not competitively negotiate in the free market, because they demand premium video content be made available to them for free or near free.

Second, they prove that Google knows full well that its willful blindness to profiting from mass piracy is both anticompetitive and predatory.

Third, they help expose the FCC's apparent willful blindness that their purported set-top box AllVid NPRM does not have a limited, narrow and containable effect on competition for just the set-top box market segment, but that it actually has broad, uncontrollable and predictable ancillary impacts that are demonstrably [anticompetitive](#), [monopolistic](#) and [monopsonistic](#) to the value of the most valuable corpus of video content in the world.

### **What's at stake?**

It is important to note here that the financial stakes are much higher in this highly-controversial, [Google-driven](#), FCC AllVid [proposal](#) than in Google's past piracy schemes.

That's because what is really at stake in AllVid is not the roughly \$20b in cable set-top box revenues that the FCC myopically touts to justify its proposal. What is at stake is content that generates ten times as much in annual revenues as set-top boxes, roughly \$200b in annual video content revenues. (Annual TV advertising

revenues were ~\$80b in 2015 per [Strategy Analytics](#) estimates, and annual multichannel video revenues were ~\$120b in 2015 per [SNL Kagan](#) estimates.)

### **Summary of the Sordid Story that Google's Gmail Trail Tells**

For perspective, I have organized the most telling [undisputed](#) quotes from Google execs that lay bare a damning legal fact predicate for Google-YouTube's anti-competitive behavior. It shows:

- (1) *Prior* to buying YouTube, senior Google executives were actively considering an anti-competitive strategy of extortion – i.e. threatening illegal mass-copyright-infringement of copyright law to extract better terms to access valuable content.
- (2) At the same time, YouTube on its own was knowingly and aggressively facilitating rampant video piracy of valuable content in order to grow its value and sell the company at the highest price.
- (3) Google then knowingly bought YouTube fully aware that it was buying an Internet video distribution site dependent on piracy for its traffic, growth, and value.
- (4) Just a few months *after* buying YouTube, Google formalized a program of effective predatory copyright infringement and willful blindness to piracy to try and sign content on more favorable terms, i.e. an extension of its original anticompetitive extortion strategy.
- (5) Since then, Google has continued and perfected YouTube's copyright arbitrage practice -- of openly welcoming and benefiting from copyright infringement for the period from upload to DMCA takedown. (Last week, Google [reports](#) copyright owners requested Google take down 22 million infringing URLs for just that week period.)

### **Google Execs' incriminating Gmails that Google did not dispute in Federal Court [ruling](#)**

- (1) Prior to buying YouTube, senior Google executives were actively considering an anti-competitive strategy of forcing free video model on premium content providers by threatening mass copyright infringement to extort better terms to access others' valuable content.

*"On June 8, 2006, Google senior vice president Jonathan Rosenberg, Google Senior VP Product Management, emailed Google CEO Eric Schmidt and Google co-founders Larry Page and Sergey Brin a Google Video presentation that stated the following:*

*"Pressure premium content providers to change their model towards free; Adopt 'or else' stance re prosecution of copyright infringement elsewhere; Set up 'play first, deal later' around 'hot content.' " The presentation also stated that "[w]e **may be able to coax or force access to viral premium content**," noting that Google Video could **"Threaten a change in copyright policy"** and **"use threat** to get deal sign-up."* [Bold added for emphasis.] *Viacom v. YouTube* [SUF #161](#)

(2) At the same time, the revenue-less YouTube start-up obviously knowingly aided and abetted video piracy in order to grow its traffic virally so that it could then sell the company at the highest price.

*"Steal it!..."we have to keep in mind that we need to attract traffic. How much traffic will we get from personal videos?"* YouTube Co-founder Steve Chen [SUF #44](#)

*"If you remove the potential copyright infringements... site traffic and virality will drop to maybe 20% of what it is."* YouTube Co-founder Steve Chen [SUF #55](#)

*"But we should just keep that stuff on the site. I don't really see what will happen. What? Someone from CNN sees it? He happens to be someone with power? He happens to want to take it down right away? He get in touch with cnn legal. 2 weeks later, we get a cease & desist letter. We take the video down."* YouTube co-founder Steve Chen [SUF #47](#)

*"We're going to have a tough time defending we are not liable... when one of the co-founders is blatantly stealing content from other sites and trying to get everyone to see it."* YouTube Co-founder Steve Chen [SUF #40](#)

*"Save your meal money for some lawsuits!"* YouTube co-founder Hurley [SUF #38](#)

*"...concentrate all our efforts in building up our numbers as aggressively as we can through whatever tactics, however evil."* YouTube co-founder Chen [SUF #85](#)

(3) Then Google knowingly bought YouTube aware it was buying a piracy-driven/dependent Internet video distribution site, despite substantial high-level opposition internally.

*"It crosses the threshold of Don't be Evil to facilitate distribution of other people's intellectual property..." "It's a cop out to resort to dist-rob-ution."* Google Video Manager Ethan Anderson [SUF #164](#)

*“...is changing policy [to] increase traffic beforehand that we’ll profit from illegal downloads how we want to conduct business? Is this Googley?”* Google Co-founder Sergey Brin quoted [SUF #162](#)

*“I think we should beat YouTube... but not at all costs. [They are] a video Grokster.”* Google’s Eun to CEO Eric Schmidt before the deal was done [SUF #158, #162](#)

(4) After buying YouTube, Google knowingly operated a piracy-tolerant Google-YouTube in accordance with its original Pre-YouTube strategy of anti-competitively extorting competitors by forcing media companies into revenue deals with Google, if they wanted Google to protect their video content from mass piracy.

*“Audio fingerprinting system whereby the content partner can send ‘reference’ fingerprints’ to Audible Magic’s database “are now live as well and are only offered to partners who enter into a revenue deal with us.””* Google Manager David Eun 2-15-07 [SUF #216](#) [underline added for emphasis]

(5) After owning YouTube for several months Google was aware of growing mass copyright infringement by Google-YouTube:

*“...a trend we see is that people upload copyrighted videos to their private videos... and then invite large numbers of people to view the video which bypasses our copyright restrictions”* Google-YouTube employee Julie Havens in a 7-18-07 internal Google email [SUF #199](#)

## **Conclusion**

Google-YouTube’s predatory copyright infringement and willful blindness to mass piracy is exceptionally anticompetitive and profitable because it:

Generates an unbeatable *cost* advantage by avoiding the market cost of propertied goods for which law-abiding competitors must pay;

Creates an unfair, jump-the-gun, *time-to-market* advantage, by ignoring the rule of law standard of securing permission from property owners *before* use in the marketplace, a business practice that law-abiding competitors must respect;

Spawns and maintains a matchless online monopsony *index/inventory* advantage that no law-abiding competitor could hope to assemble; and

Kneecaps property-based, subscription-monetization models which compete with Google's piracy-friendly, free advertising model.

Google's forced video commons strategy is the ultimate predatory anti-competitive business practice, in that it unlawfully destroys the value of any copyrighted innovation and creative proprietary trade secret advantage a competitor may produce in a free market.

In short, Google-YouTube has an undisputed, demonstrable anticompetitive pattern of behavior over a decade that seeks to predatorily extort better wholesale video pricing by threatening to devalue, debase, and destroy video programmers businesses via willful blindness to mass video piracy on YouTube.

It should be beneath the FCC to allow itself to be used as Google's de facto "muscle" to extort and force via government mandates that monopolist Google could not fairly negotiate by itself in the vibrantly competitive ~\$200b pay TV marketplace.

\*\*\*

*Note: this piece draws heavily upon prior Precursor LLC [research](#) that was published and submitted to the DOJ Antitrust Division in the summer of 2013.*

Respectfully submitted,

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